

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Establishing the Digital Opportunity Data)	WC Docket No. 19-195
Collection)	
)	
Modernizing the FCC Form 477 Data Program)	WC Docket No. 11-10

REPLY COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

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NCTA – The Internet & Television Association (“NCTA”) hereby files these reply comments to assist the Federal Communications Commission (“FCC” or “Commission”) in building upon its laudable efforts in the *Data Collection Order* to improve the detail and reliability of its broadband maps.¹

I. INTRODUCTION AND SUMMARY

The initial comments filed in response to the *Data Collection Order and FNPRM* identify a clear path forward for the Commission to quickly improve the granularity and accuracy of the broadband deployment data it collects without placing unreasonable burdens on any stakeholders. In these reply comments, NCTA will focus on six key elements of this strategy:

1. The Commission should move forward with the polygon shapefile reporting requirement in a manner that gives providers flexibility to create shapefiles based on data they already possess, as long as the shapefiles are compatible with the GIS system to be used by the Commission and appropriately identify served areas as defined by the Commission.
2. The Commission should reject proposals to use this data collection as a vehicle for collecting non-deployment data, such as latency data or pricing data, that is already available elsewhere.

¹ *Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79 (rel. Aug. 6, 2019) (“Data Collection Order” or “Data Collection Order and FNPRM,” as appropriate).*

3. The Commission should harmonize the schedule for submitting polygon shapefiles with the existing schedule for filing the Form 477 to simplify the process for providers and the Commission.
4. The Commission should reject proposals to impose strict liability on broadband providers for errors in reporting.
5. The Commission should adopt a two-tier framework for incorporating data from the public, with a formal evidence-based challenge process taking place before funds are awarded and an informal feedback mechanism available for all other information.
6. The Commission should continue to explore the costs and benefits of creating a broadband serviceable location tool, but it should not delay implementation of the polygon shapefile reporting requirement or the distribution of funding from the Rural Digital Opportunity Fund while it considers these issues.

Each of these steps has wide support in the record, and NCTA encourages the Commission to move ahead with such an approach expeditiously.

II. PROVIDERS SHOULD HAVE FLEXIBILITY IN REPORTING BROADBAND COVERAGE DATA

Throughout the recently released *Data Collection Order and FNPRM*, the Commission indicates that it is endeavoring to increase the granularity and enhance the accuracy of the broadband coverage data it receives without imposing undue burdens on service providers.² In developing the more detailed aspects of this data collection effort, the Commission should continue to give due consideration to both of these public interest goals. As USTelecom, ITTA, and WISPA correctly note, the “core objective of gathering more detailed and accurate data regarding broadband deployment can only be achieved if the process of collecting and reporting that data is sufficiently simplified and streamlined such that all providers, particularly smaller

² See, e.g., *Data Collection Order and FNPRM* ¶ 21 (“In establishing the Digital Opportunity Data Collection, we are cognizant of the need to ensure that the benefits resulting from the use of the data outweigh the reporting burdens imposed on filers.”); *id.* ¶ 77 (“[W]e seek comment on steps the Commission can take to improve the quality of fixed broadband coverage polygons while minimizing the associated filing burdens.”).

companies serving rural areas, can report their data easily, accurately and at reasonable cost.”³

To achieve this core objective, the Commission should not adopt strict technical parameters for fixed broadband polygons or require providers to submit additional types of data. Further, it should synchronize the Digital Opportunity Data Collection with Form 477 due dates and adopt an enforcement framework that only penalizes misreporting based on intentional or persistent errors, not the good-faith mistakes that are inevitable under such a granular reporting regime.

A. The FCC Should Adopt Only Limited Technical Parameters for Fixed Broadband Polygons

The FCC should not impose significant constraints on how broadband providers establish their polygons. Doing so would risk ignoring “consideration of individual network characteristics” given that “determining the area served by a broadband network is highly idiosyncratic and determined by multiple factors.”⁴ Instead, the Commission should require providers to submit data that is compatible with the software the FCC intends to use, but otherwise afford providers substantial flexibility in creating their shapefiles. As Verizon indicates, permitting providers “to rely on their own services, network designs, and internal data” will enable them to “most accurately map their own footprints.”⁵ Additionally, Alexicon rightly notes that adding further technical specifications “will serve to increase cost and burden for

³ USTelecom Association – The Broadband Association, ITTA – The Voice of America’s Broadband Providers, and the Wireless Internet Service Providers Association Comments at 20-21 (“USTelecom, ITTA, and WISPA Comments”); *see also, e.g.*, Alaska Communications Systems Group, Inc. Comments at ii (“Alaska Communications urges the Commission to implement its new polygon-based approach to gathering broadband availability data in ways that minimize the burden[.]”) (“Alaska Communications Comments”); Alexicon Telecommunications Consulting Comments at 2 (“[M]ore work must be done to ensure the process is properly balanced between generating additional accuracy [and] the additional burden placed on reporting carriers.”) (“Alexicon Comments”). Unless otherwise noted, all comments were filed in WC Docket Nos. 19-195 and 11-10 on Sept. 23, 2019.

⁴ *Data Collection Order and FNPRM* ¶ 79.

⁵ Verizon Comments at 2-3; *see also, e.g.*, ACA Connects – America’s Communications Association Comments at 7 (urging the Commission to “eschew adopting restrictive mandates about how to report broadband coverage”) (“ACA Connects Comments”).

reporting carriers, and will add little, if any, benefit in terms of broadband data accuracy.”⁶ In short, providers must be given the flexibility to create shapefiles that can be efficiently developed based on their individual circumstances.

B. The FCC Should Not Require Providers to Submit Additional Types of Data

The Commission should reject proposals to expand the scope of the data providers must file as part of the Digital Opportunity Data Collection. For example, the FCC should not require providers to report latency data. As multiple parties note in their comments, latency is not a measure of broadband deployment,⁷ and “[t]he additional burden of measuring and reporting latency across the nation...far exceeds any incremental benefit to be gained from the additional data.”⁸ Imposing a latency reporting obligation is particularly unwarranted with respect to fixed wireline broadband providers because there is no evidence of latency problems associated with these services.

In addition, the Commission should not require providers to report pricing or quality of service data, as suggested by a few commenters.⁹ Given the breadth of information that already is available pursuant to the Commission’s transparency rules and through other mechanisms (e.g., the Measuring Broadband America program), requiring the submission of such data in the

⁶ Alexicon Comments at 4.

⁷ California Internet, L.P. dba GeoLinks Comments at 6 (“[L]atency is not a measure of broadband ‘deployment.’”) (“GeoLinks Comments”); USTelecom, ITTA, and WISPA Comments at 4 (“Although latency may be a relevant metric when assessing broadband performance, the Joint Commenters oppose the inclusion of latency as a reportable metric for broadband *availability*.”) (emphasis in original).

⁸ Alaska Communications Comments at iii; *see also, e.g.*, USTelecom, ITTA, and WISPA Comments at 22 (“The costs and complexities of including latency as part of this data collection would far outweigh any benefit to be gained from attempting to collect this data from broadband providers.”); Verizon Comments at 4 (“Obtaining more granular latency data to go along with the coverage polygons will impose significant burdens on providers and will provide little useful information beyond what already is available.”).

⁹ *See* Free Press Comments at 8-9, 11-13; Next Century Cities, the Institute for Local Self-Reliance, Benton Institute for Broadband & Society, the National Digital Inclusion Alliance, Access Humboldt, the Center for Rural Strategies, Southern California Tribal Chairmen’s Association, and X-Lab Comments at 8-11 (“Next Century Cities, *et al.* Comments”).

context of deployment reporting will add new burdens without providing new or meaningful information. Collecting broadband pricing data would be especially challenging because broadband typically is purchased as part of a bundle with other services and frequently is subject to a promotional offer. As a result, customers purchasing a given tier of broadband services from the same provider may be paying a range of rates. Moreover, the effort required for the Commission or Universal Service Administrative Company (“USAC”) to organize and analyze these types of information would only serve to further delay the release of updated, more granular broadband deployment data.

C. The FCC Should Harmonize the Filing Dates for the Form 477 and New Data Collection

The Commission indicated that it intended for filers subject to the Digital Opportunity Data Collection to be able to “generally batch their changes together in six-month increments, resulting in two updated filings per year.”¹⁰ As NCTA and others have explained, however, the Commission’s requirements actually will require more frequent filings. For example, USTelecom, ITTA, and WISPA note that the FCC’s obligations appear to “assume that providers will be reporting data on an incremental basis to update information previously reported,” despite the fact that “[t]his type of reporting is highly problematic for providers with large amounts of data to report” and also would increase the burden on “USAC in having to accept a constant flow of new data.”¹¹

The Commission should resolve this potential issue by permitting providers “to submit their polygons in conjunction with the June 30th and December 31st Form 477 certification

¹⁰ See, e.g., *Data Collection Order and FNPRM* ¶ 16, n.32.

¹¹ USTelecom, ITTA, and WISPA Comments at 19-20.

deadlines.”¹² This relatively simple measure would serve the Commission’s interest in finding ways “to lessen reporting burdens on all filers as part of the new data collection, especially ways to harmonize filing procedures and requirements from other collections to reduce duplication of efforts[.]”¹³

D. The FCC Should Not Adopt a Strict Liability Standard

A small number of parties erroneously argue that providers should be penalized for all reporting errors, including immaterial and unintentional mistakes.¹⁴ To the contrary, the Commission should follow the more reasonable path proposed by the majority of commenters. In particular, NCTA agrees with Connected Nation that the FCC should use a “tiered penalty structure for demonstrated intentional misreporting and chronic misreporting.”¹⁵ As ACA Connects notes, this approach to enforcement would be consistent with recent mapping accuracy legislation, which “sanction[s] providers that ‘willfully, knowingly, or recklessly’ submit inaccurate broadband coverage information, underscoring the need for a high evidentiary burden for assessing alleged reporting violations.”¹⁶ Moreover, “avoiding a ‘strict liability’ approach to data reporting properly distinguishes between those entities that make a conscientious, good faith effort to provide accurate data and those that fail to take their reporting obligations seriously or

¹² *Id.* at 19.

¹³ *Data Collection Order and FNPRM* ¶ 82.

¹⁴ *See, e.g.,* City of New York Comments at 3.

¹⁵ Connected Nation, Inc. Comments at 6 (“Connected Nation Comments”); *see also, e.g.,* ACA Connects Comments at 9 (indicating that the FCC should “permit[] providers to fix errors without penalty, except where the provider’s errors are intentional and persistent”); Alaska Communications Comments at 11 (“Except where there is a finding of intentional or negligently persistent misreporting, there should be no sanctions for coverage errors. Neither the Commission nor USAC should exercise any enforcement authority to impose compliance penalties when reporting entities are attempting in good faith to file accurate and timely information and promptly update it when they become aware of errors.”); State of Colorado Comments at 8 (“If the USAC finds pervasive reporting errors, bad faith, or a refusal to correct data that has been found inaccurate, additional steps should be taken, such as referring the matter to the FCC for enforcement action and penalties.”) (“Colorado Comments”).

¹⁶ ACA Connects Comments at 11, n.29.

affirmatively manipulate the data being reported.”¹⁷ Put simply, providers should not be penalized for unintentional errors in their reports.

III. THE COMMISSION SHOULD AUGMENT THE DIGITAL OPPORTUNITY DATA COLLECTION ONLY WITH ACCURATE, VALIDATED DATA

Most commenters agree that the FCC should establish a process for identifying errors in the broadband coverage information submitted in the Digital Opportunity Data Collection. The Commission, however, must be careful to ensure that any process it implements actually will improve the accuracy of the data submitted by providers.¹⁸ Specifically, the Commission should implement a challenge process that adequately safeguards against the risk of error and abuse inherent in such a process. The FCC also should move forward with a broadband location tool limited to rural areas only after the Commission successfully addresses the many outstanding issues associated with developing this tool.

A. The FCC Should Adopt a Two-Tiered Challenge Framework

As GVNW states, “allowing public review and dispute of the reported broadband coverage of a carrier can be a ‘double-edged sword’ in that the crowdsourcing can provide good feedback regarding a carrier’s ability or inability to provide broadband service in an area but also could provide faulty feedback at times as well.”¹⁹ To address the potential for such “faulty” input, the Commission should develop a two-tiered framework for considering challenges to a provider’s reported coverage data.

First, the FCC should create a formal, evidence-based challenge process that would be conducted in disputed areas before funding is awarded through a new subsidy mechanism. As

¹⁷ USTelecom, ITTA, and WISPA Comments at 25.

¹⁸ *See, e.g.*, Verizon Comments at 5.

¹⁹ GVNW Consulting, Inc. Comments at 5.

NTCA observes, establishing the challenge process “as a ‘final check’ at such time as the Commission is proposing to use the maps for funding or other policy decisions” will minimize the burdens associated with the process.²⁰ Further, the FCC should limit this formal challenge process to claims that a provider does not serve a particular geographic area that is eligible for support.²¹

The Commission also should adopt safeguards to “protect providers from overwhelming burdens of sifting the wheat from the chaff.”²² In particular, several commenters agree that the FCC should, at a minimum, adopt its proposal to require “individuals disputing coverage [to] certify that they have requested service from the provider and that the provider either refused, or failed, to provide service within the applicable 10-business day period.”²³ The Commission also should consider requiring a certification under penalty of perjury that “attest[s] to the truth, accuracy, and completeness of the challenger’s assertions to the best of the challenger’s knowledge, information and belief.”²⁴ In short, the formal challenge process should be limited to credible, verifiable claims that a provider does not in fact serve a particular geographic area that is eligible for support.

²⁰ NTCA – The Rural Broadband Association Comments at 10 (“NTCA Comments”).

²¹ Allegations by an individual that his or her broadband service provider is not supplying service at the speed the individual has purchased should be treated as an informal complaint. As commenters indicate, the Commission should be careful not to duplicate the informal complaint process in establishing a challenge process, because doing so would both increase the burdens placed on service providers and lead to consumer confusion. *See, e.g.*, USTelecom, ITTA, and WISPA Comments at 27 (indicating that the FCC should distinguish between the challenge process and the consumer complaint process); Verizon Comments at 5-6 (“Public questions about broadband coverage under this feedback process are different than informal customer complaints, and the Commission should neither meld the two nor develop a surrogate process for public feedback that duplicates the existing informal complaint process.”).

²² Verizon Comments at 5.

²³ *Data Collection Order and FNPRM* ¶ 91. *See also, e.g.*, ACA Connects Comments at 11-12; Alaska Communications Comments at 14; GeoLinks Comments at 5; USTelecom, ITTA, and WISPA Comments at 34.

²⁴ USTelecom, ITTA, and WISPA Comments at 34.

Second, the Commission should establish a less rigorous system for providing informal feedback. This process would allow filers to submit information that does not meet the evidentiary standard of the formal challenge process. As a result, crowdsourced data, despite its numerous shortcomings, would be considered.²⁵ Given the less credible and precise nature of the data submitted, however, providers should not be obligated to respond to every informal comment. Instead, data submitted as part of this process should, as NTCA proposes, “be used to detect trends with respect to coverage claims.”²⁶ Thus, “rather than acting on each individual crowdsourced complaint, upon the detection of trends in terms of complaints directed to an individual provider’s coverage claims, USAC could initiate a process to investigate[.]”²⁷

As WTA correctly notes, a formal challenge process coupled with an informal feedback mechanism “can be an effective ‘one-two punch’ that can verify maps[.]”²⁸ In instances where either of these processes identifies errors in provider-submitted data, the Commission should require providers to correct those inaccuracies as part of their next Digital Opportunity Data Collection submission. USTelecom, ITTA, and WISPA rightly note that “[h]aving a fixed and known schedule for data updates and enabling providers to avail themselves of efficiencies in submitting batch data corrections best balances the need for data corrections against the burdens

²⁵ See, e.g., NTCA Comments at ii-iii (noting that crowdsourced data can act “as a complement to the challenge process”); WTA – Advocates for Rural Broadband Comments at i, 12 (Because “there are a number of reasons, usually out of an RLEC’s control, that could explain a customer not receiving the speed and latency measurements” he or she expects, “crowdsourcing is not the most suitable route to decide whether or not a provider actually delivers on the speeds and latency it purports to offer.”) (“WTA Comments”).

²⁶ NTCA Comments at 12.

²⁷ *Id.*; see also, e.g., Alaska Communications Comments at 12; Alexicon Comments at 6-7; Connected Nation Comments at 6-7 (“We believe the use of crowdsourcing...should be tracked in the aggregate, for the purpose of identifying areas on the resulting maps that warrant further refinement or investigation.”); Verizon Comments at 6 (“Crowdsourcing that focuses on identifying trends and trouble-spotting, rather than addressing every unique claim, can be useful and avoid the burdens on providers and USAC of the inevitable clutter of managing an anonymous internet submission process with few filters.”).

²⁸ WTA Comments at 14.

to which providers otherwise would be subject with an unbounded or more frequent data update requirement.”²⁹ Limiting the corrections to the established schedule for submitting updated data would be consistent with the Commission’s commitment to the dual public interest goals of promoting data accuracy and reliability and minimizing administrative costs.

B. The Commission Must Address Numerous Outstanding Questions Regarding a Broadband Location Tool to Determine Whether Such a Tool Will Be Useable

NCTA agrees with many commenters that there may be value in gathering additional data that focuses on identifying the number and location of unserved homes and businesses in rural areas. The record, however, shows that there are a variety of significant, outstanding issues that must be addressed and resolved before the Commission can use a location-based tool to make funding decisions. For example, the FCC should not implement the broadband serviceable location tool proposed by the Broadband Mapping Coalition (“BMC”) until after it obtains and seeks comment on significantly more information about how the tool would be created and updated. As Colorado indicates, the “methodology and the resulting Broadband Serviceable Location Fabric[] need to be better documented, made publicly available, and peer-reviewed before being integrated into” the Digital Opportunity Data Collection.³⁰ Similarly, ACA Connects notes that “even as the BMC declares its pilot a success, its filings upon closer inspection indicate that full implementation of a location-specific approach will still need to clear

²⁹ USTelecom, ITTA, and WISPA Comments at 29-30; *see also, e.g.*, Alaska Communications Comments at iii (“The Commission should establish a streamlined process for correcting polygon errors or addressing coverage disputes by permitting service providers to incorporate those updates in their next-scheduled semi-annual polygon update due at least 30 days after receiving notice of the error or dispute.”); GeoLinks Comments at 4 (“GeoLinks urges the Commission not to implement correction timeframes that impose additional burden on service providers. The Commission should require that any corrected data be submitted with a service provider’s next filing opportunity[.]”); Verizon Comments at 6-7 (“NCTA’s proposal helpfully would permit providers to submit collections at the next filing opportunity, instead of immediately, so that map corrections and responses to challenges are synchronized.”).

³⁰ Colorado Comments at 9.

many hurdles.”³¹ In sum, substantial work remains to be done before the Commission could add a location-based methodology for identifying unserved locations.

Moreover, even if the Commission were able to successfully resolve these significant issues, the Commission still would need to carefully weigh the benefits of establishing a broadband serviceable location tool against the “extraordinary costs” involved in implementing that methodology.³² One way of mitigating the burdens associated with administering a location-based database would be to limit the database to rural areas, particularly areas that are identified as unserved and that therefore would be eligible for future broadband deployment-related subsidies. Indeed, the Commission has highlighted the importance of “more granular data” that will enable the agency “to target unserved locations more precisely, especially in many rural areas that continue to lack broadband service.”³³ Another option to mitigate the costs associated with creating and administering a location-based tool would be to utilize existing mapping tools, such as the Pitney Bowes Address Fabric Data product, as an input or substitute rather than creating a new tool from scratch.

In view of the many significant concerns that must be addressed and resolved before the Commission would be in a position to adopt a location-based tool or database, the record reflects agreement that the Commission should proceed with the shapefile-based Digital Opportunity Data Collection while it continues to consider these matters.³⁴ The Commission recognized that a “critical benefit of transitioning to a polygon-based reporting format is the speed in which such

³¹ ACA Connects Comments at 15.

³² Alaska Communications Comments at iii.

³³ *Data Collection Order and FNPRM* ¶ 21.

³⁴ See, e.g., ACA Connects Comments at 15 (noting that it will take time to resolve these “difficult issues” and to establish a process for collecting location-specific data but that these matters “should not hold up establishment of the portal for filing polygons”); Next Century Cities, *et al.* Comments at 3; National Rural Electric Cooperative Association Comments at 4 (“NRECA Comments”).

a solution can be implemented.”³⁵ Simply stated, there is no reason to deprive consumers of this public interest benefit by delaying the new data collection process until the substantial problems identified above have been resolved.

IV. THE COMMISSION SHOULD SUNSET PORTIONS OF THE FORM 477 DATA COLLECTION SHORTLY AFTER THE NEW DATA COLLECTION INFORMATION HAS BEEN SUBMITTED AND SHOULD NOT OTHERWISE MODIFY THE FORM 477 REQUIREMENTS AT THIS TIME

Because the Digital Opportunity Data Collection is likely to “largely displace” portions of the Form 477 data collection, the Commission seeks comment on “discontinuing the broadband deployment data collection that is part of Form 477 at some point after the new collection has been established.”³⁶ The comments of numerous parties properly emphasize that the Commission should not impose duplicative coverage reporting obligations on providers. For example, the National Rural Electric Cooperative Association (“NRECA”) aptly observes that once the Digital Opportunity Data Collection “process has proven effective, the FCC Form 477 will be obsolete.”³⁷ Moreover, retaining the Form 477 filing requirement after the new data collection process has been implemented would impose unnecessary administrative costs, since “[p]roducing highly granular service availability in census block form...requires additional data, staff processing, and review efforts.”³⁸ To avoid these redundant burdens on service providers, the Commission should sunset the broadband deployment data aspects of the Form 477 data collection no later than one full year after the new data collection is implemented.

³⁵ *Data Collection Order and FNPRM* ¶ 25.

³⁶ *Id.* ¶ 135.

³⁷ NRECA Comments at 6; *see also, e.g.*, Alaska Communications Comments at 18 (noting that “[c]overage polygons will be more detailed than the Form 477 census block data, so there is no need to collect both sets of information”); United States Cellular Corporation Comments at 8.

³⁸ Verizon Comments at 13.

With respect to the remaining aspects of the Form 477 data collection, the Commission should reject calls to increase the burdens associated with this collection or to modify the FCC’s newly established policy about the aspects of the data that are made available to third parties. For example, Free Press incorrectly argues that the Commission “already directed the Wireline Competition Bureau to develop a system so that outside researchers can access confidential disaggregated Form 477 subscribership data, but the Bureau never acted on this directive.”³⁹ In fact, the Commission stated that, if the relevant Bureaus can “identify ways to increase public access to subscription data while addressing concerns about the competitive sensitivity of the data,” then they should “increase public access accordingly.”⁴⁰ In the recent *Data Collection Order*, the Commission undertook precisely that inquiry and carefully balanced the considerations in favor of maintaining the confidentiality of Form 477 data against the benefits of further disclosure. Based on that analysis, the Commission decided to make “much of the information filed in the Form 477 data collection public.”⁴¹ There is no plausible basis for the Commission to revisit that determination mere months after its decision.

V. CONCLUSION

For the foregoing reasons, NCTA respectfully urges the Commission to implement the Digital Opportunity Data Collection in a manner that recognizes the tremendous improvement that shapefile reporting represents relative to the current Form 477 process. As a result, the Commission should carefully weigh the costs and benefits of imposing additional obligations on

³⁹ Free Press Comments at 12-13.

⁴⁰ *Modernizing the FCC Form 477 Data Program*, Report and Order, 28 FCC Rcd 9887, ¶ 80 (2013).

⁴¹ Statement of Commissioner Geoffrey Starks, Approving in Part and Dissenting in Part, *Data Collection Order and FNPRM* (further indicating that “this transparency will benefit the public by making the FCC’s data more accessible for researchers, academics, State governments, localities, and anyone with an interest in tracking the state of broadband deployment”).

broadband service providers, particularly given that many unanswered questions remain about how best to ensure that any further broadband service information the Commission may wish to rely upon is accurate.

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